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8 North American Company For Life and  
9 Health Insurance

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 NORTH AMERICAN COMPANY FOR  
11 LIFE AND HEALTH INSURANCE,

12 Plaintiff,

13 vs.

14 MICHAEL L. PHILPOT, an individual,  
15 VIRGINIA B. HIRSH, an individual,  
16 JOHN B. KUYKENDALL, an individual,  
17 RENE ALEJANDRO LACAPE, an  
individual, C. RICHIE MCNAMEE, an  
individual and HECTOR PAEZ VALDEZ,  
an individual,

Defendants.

No.: '08 CV 0270 BEN NLS

PLAINTIFF NORTH AMERICAN  
COMPANY FOR LIFE AND  
HEALTH INSURANCE'S RICO  
CASE STATEMENT PURSUANT TO  
SOUTHERN DIST. LR 11.1

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

Pursuant to Southern District Civil Rule 11.1, plaintiff North American Company for Life and Health Insurance ("North American") submits this RICO Case Statement:

**1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. 1962(a), (b), (c), and/or (d):** 18 U.S.C. 1962 (c);

**2. List the defendants and state the alleged misconduct and basis of liability of each defendants:** Michael L. Philpot ("Philpot"), Virginia B. Hirsh, John B. Kuykendall, Rene Alejandro Lacape, C. Richie McNamee, and Hector Paez Valdez (collectively referred to herein as "Defendants"). Each defendant is licensed in the state of California as an insurance agent, and has sold North American UL policies, and presently sells the life insurance products of other insurance companies, in this judicial district.

North American is informed and believes, and on these bases alleges that, each of the Defendants and acting in concert with each other, has participated and actively participates in a scheme to illegally obtain millions of dollars in undeserved and unearned commissions and bonuses from North American through a scheme of offering and paying secret rebates and/or advancing premium payments to North American and other insurance companies in exchange for the application for life insurance policies from North American and other companies by certain complicit individuals, without any good faith intention of actually maintaining these policies or paying the premiums for them as those policies were designed or as these policies require. Defendants use instrumentalities of interstate commerce, specifically wire and mail, to apply for said life insurance policies in the name of certain complicit individuals.

1 North American is informed, believes and on these bases alleges that  
2 Defendants either purchase these life insurance policies for the complicit individuals  
3 by advancing premium payments or paying these complicit individuals secret rebates  
4 for applying for these policies. A single premium is paid for each such policy in an  
5 amount equal to the minimum premium necessary for Defendants to earn the  
6 maximum commission on the policy, an amount insufficient to continue the policy in  
7 force for more than a few years. Defendants then unlawfully collect the up-front sales  
8 commissions paid to them by North American and other insurance companies for  
9 these policies. The afore-referenced scheme perpetrated by Defendants is hereafter  
10 referred to as "the Illegal Commission Scheme". North American is informed,  
11 believes and upon these bases, alleges, that the Illegal Commission Scheme is ongoing  
12 and continuous and was and is done in the regular way that the Michael Philpot  
13 Agency did and does conduct its business;

14  
15 **3. List alleged wrongdoers, other than the defendants listed above, and**  
16 **state the alleged misconduct of each wrongdoer:** North American will amend its  
17 complaint to add as defendants those individuals who have assisted Defendants in  
18 perpetrating the Illegal Commission Scheme and participated therein, including those  
19 complicit sales agents in the Michael Philpot Agency enterprise and those individuals  
20 who applied for and purchased life insurance policies but who, unbeknownst to North  
21 American and other insurance companies, were complicit in the Illegal Commission  
22 Scheme, at such time as the identities of these individuals are discovered by North  
23 American;

24  
25 **4. List the alleged victims and state how each victim was allegedly**  
26 **injured:** Plaintiff North American was injured at the hands of the Defendants' Illegal  
27 Commission Scheme to the tune of tens of millions of dollars that were paid to  
28

1 Defendants in unearned, ill-gotten commission and bonuses, which damages are  
2 described specifically in concurrently filed complaint.

3  
4 **5. Describe in detail the pattern of racketeering activities or collection**  
5 **of unlawful debts alleged for each RICO claim:** North American has learned, and is  
6 informed, believes and upon these bases alleges, that from at least 2004 through May  
7 2007, Defendants, working through the Michael Philpot Agency as their enterprise,  
8 have engaged in the Illegal Commission Scheme. The Illegal Commission Scheme  
9 entails Defendants' offering of and paying to certain complicit individuals, posing as  
10 legitimate potential insureds, secret rebates and other monetary incentives, including  
11 advancing insurance premiums due North American, in exchange for these individuals  
12 applying for UL policies with North American, as well as for life insurance policies  
13 with other insurance companies.

14  
15 North American has learned, is informed, believes and upon these bases alleges,  
16 that these insurance policies were applied for without any good faith intention on the  
17 part of Defendants or the complicit individuals that the policies would actually be  
18 maintained or that applicable premiums would be paid, as those policies were  
19 designed or as the policies required. The applications of these complicit individuals to  
20 purchase these life insurance policies were subsequently submitted by Defendants to  
21 North American and other insurance companies, using instrumentalities of interstate  
22 commerce, specifically, by wire and mail.

23  
24 The transmission of these insurance applications through the mail, which were  
25 fraudulent and a part of the Illegal Commission Scheme, constitutes predicate acts of  
26 mail fraud as defined in the RICO statute. North American is informed, believes and  
27 upon these bases alleges, that the majority of the over 700 policies written by the  
28 Michael Philpot Agency were fraudulently submitted to North American through the

1 mail. North American does not list all of the instances Defendants committed the  
2 predicate acts here, but as examples, defendant Philpot submitted fraudulent policies  
3 LB00597230, LB00659630 and LB00697840 through the mail to North American on  
4 March 2, 2005, March 9, 2005 and July, 21, 2005, respectively; defendant Hirsh  
5 submitted fraudulent policies LB00505840, LB00506390 and B00504400 through the  
6 mail to North American on January 17, 2004, June 17, 2005 and June, 14, 2005,  
7 respectively; defendant Kuykendall submitted fraudulent policies LB00553040,  
8 LB00549650 and LB00552770 through the mail to North American on September 20,  
9 2004, September 13, 2004 and September 30, 2004, respectively; defendant Lacape  
10 submitted fraudulent policies LB00511220, LB00511700 and LB00511720 through  
11 the mail to North American on June 28, 2004; defendant McNamee submitted  
12 fraudulent policies LB00506610 and LB00506650 on June 18, 2004 and policy  
13 LB00512160 on June 28, 2004 through the mail to North American; and defendant  
14 Valdez submitted fraudulent policy LB00526290 on July 26, 2004, and policies  
15 LB00527240 and LB00527220 on July 28, 2004, through the mail to North American,  
16 all of which acts constitute the predicate acts of mail fraud.

17  
18 Then, as North American has learned, is informed, believes and upon these  
19 bases alleges, Defendants either purchase these life insurance policies for the  
20 complicit individuals by advancing premium payments or paying these complicit  
21 individuals secret rebates for applying for these policies. A single premium is paid for  
22 each such policy in an amount equal to the minimum premium necessary for  
23 Defendants to earn the maximum commission on the policy, an amount insufficient to  
24 continue the policy in force for more than a few years. Defendants then unlawfully  
25 collect the up-front sales commissions paid to them by North American and other  
26 insurance companies for these policies. In addition, Defendants unlawfully collect  
27 bonuses paid to them by their upline agents for the sales of these fraudulent policies.  
28 These policies lapse with significant negative account values within three years of

1 their issue, long before collected premiums cover the costs and expenses incurred by  
2 North American associated with these policies. As a result of the applications  
3 submitted by Defendants on behalf of the individuals complicit in the Illegal  
4 Commission Scheme, said scheme being unbeknownst to North American, North  
5 American subsequently processed these applications and issued UL policies to certain  
6 policyholders.

7  
8 North American is informed, believes and on these bases alleges, that  
9 Defendants submitted applications for life insurance to other insurance companies on  
10 behalf of the individuals complicit in the Illegal Commission Scheme, said scheme  
11 being unbeknownst to those insurance companies, and those companies subsequently  
12 processed these applications and issued life insurance policies to Defendants' co-  
13 conspirators in the Illegal Commission Scheme. North American is informed,  
14 believes and upon these bases, alleges, that the Illegal Commission Scheme is ongoing  
15 and continuous and was and is done in the regular way that the Michael Philpot  
16 Agency did and does conduct its business.

17  
18 North American is informed and believes, and on these bases alleges, that the  
19 complicit individuals who had applied for and purchased life insurance policies issued  
20 by North American sold to them by Defendants through the Michael Philpot Agency  
21 enterprise, who never intended to maintain or pay premiums on the policies written by  
22 Defendants, only applied and purchased said policies because of the Illegal  
23 Commission Scheme, and specifically, because of Defendants' illicit payments to  
24 them to do so. Such aforementioned policies are collectively hereafter referred to as  
25 "Sham Policies."

26  
27 North American is informed and believes, and on these bases alleges, that as  
28 with the Sham Policies, the complicit individuals who had applied for and purchased



1 life insurance policies issued by other insurance companies sold to them by  
 2 Defendants through the Michael Philpot Agency enterprise, never intended to  
 3 maintain or pay premiums on the policies written by Defendants, only applied and  
 4 purchased said policies because of the Illegal Commission Scheme, and specifically,  
 5 of Defendants' illicit payments to them to do so. The Illegal Commission Scheme and  
 6 the Sham Policies were the result of Defendants' multiple predicate acts, i.e., wire and  
 7 mail fraud, and the Defendants' multiple acts constitute a "pattern of racketeering  
 8 activity" as contemplated in the RICO statute, because such multiple acts, performed  
 9 through the Michael Philpot Agency, was the *modus operandi* and common plan of  
 10 Defendants that allowed them to perpetrate the Illegal Commission Scheme and to  
 11 obtain commissions on the Sham Policies.

12  
 13 North American is not aware of any criminal convictions or civil judgments  
 14 related to the predicate acts alleged herein.

15  
 16 **6. Describe in detail the alleged "enterprise" for each RICO claim. A**  
 17 **description of the enterprise shall include the following:**

18  
 19 **(a) state the name of the individuals, partnerships, corporations,**  
 20 **associations, or other legal entities, which allegedly constitute the enterprise:**  
 21 North American has named defendants Philpot, Hirsh, Kuykendall, Lacape,  
 22 McNamee, and Valdez as Michael Philpot Agency, i.e. the "enterprise". However,  
 23 there are hundreds of individuals acting as insurance sales agents who constitute the  
 24 Michael Philpot Agency, many of whom, North American is informed, believes, and  
 25 upon these bases alleges, also participated and continue to participate in the Illegal  
 26 Commission Scheme. North American will amend its complaint to add as defendants  
 27 in this action those individuals who have participated in the Illegal Commission  
 28 Scheme, including those complicit sales agents in the Michael Philpot Agency

1 enterprise and those individuals who applied for and purchased life insurance policies  
2 but who, unbeknownst to North American and other insurance companies, were  
3 complicit in the Illegal Commission Scheme, at such time as the identities of these  
4 individuals are discovered by North American;

5  
6 **(b) a description of the structure, purpose, function and course of**  
7 **conduct of the enterprise:** The ostensible purpose of the Michael Philpot Agency is  
8 to sell life insurance policies to consumers in the United States. However, North  
9 American is informed, believes, and upon these bases alleges, that part of the way the  
10 Michael Philpot Agency regularly conducts its business is to engage in the Illegal  
11 Commission Scheme to obtain illegal upfront commissions and bonuses on policies  
12 that were applied for by Defendants and those complicit with them, without any good  
13 faith intention of actually maintaining these policies or paying the premiums for them  
14 as those policies were designed or as these policies require, as describe in more detail  
15 herein and in the complaint filed concurrently herewith;

16  
17 **(c) a statement of whether any defendants are employees, officers or**  
18 **directors of the alleged enterprise:** While the Michael Philpot Agency is an agency  
19 in the legal sense, North American is unaware of any formal corporate structure or of  
20 any employees, officers or directors that would accompany such structure;

21  
22 **(d) a statement of whether any defendants are associated with the**  
23 **alleged enterprise:** North American is informed, believes, and upon these bases  
24 alleges, that defendants Philpot, Hirsh, Kuykendall, Lacape, McNamee, and Valdez  
25 are associated with the Michael Philpot Agency, i.e. the "enterprise" in that they used  
26 it to perpetrate the Illegal Commission Scheme;



1 (e) a statement of whether plaintiff is alleging that the defendants are  
2 individuals or entities separate from the alleged enterprise or that the defendants  
3 are the enterprise itself, or members of the enterprise: North American is  
4 informed, believes, and upon these bases alleges, that defendants Philpot, Hirsh,  
5 Kuykendall, Lacape, McNamee, and Valdez are members of the Michael Philpot  
6 Agency, i.e. the "enterprise";

7  
8 (f) if any defendants are alleged to be the enterprise itself, or  
9 members of the enterprise, an explanation of whether such defendants are  
10 perpetrators, passive instruments, or victims of the alleged racketeering activity:  
11 North American is informed, believes, and upon these bases alleges, that defendants  
12 Philpot, Hirsh, Kuykendall, Lacape, McNamee, and Valdez are perpetrators of the  
13 racketeering activity described herein and in the concurrently filed complaint;

14  
15 7. State and describe in detail whether plaintiff is alleging that the  
16 pattern of racketeering activity and the enterprise are separate or have merged  
17 into one entity: North American is informed, believes, and upon these bases alleges,  
18 that the Michael Philpot Agency is generally engaged in both lawful and unlawful  
19 activities, but that Defendants specifically use the enterprise's regular course of  
20 business as a means to perpetrate the Illegal Commission Scheme;

21  
22 8. Describe the alleged relationship between the activities of the  
23 enterprise and the pattern of racketeering activity. Discuss how the racketeering  
24 activity differs from the usual daily activities of the enterprise, if at all: The  
25 ostensible primary daily activity of the Michael Philpot Agency is to sell life  
26 insurance policies to consumers in the United States. However, North American is  
27 informed, believes, and upon these bases alleges, that at least part of the way the  
28 Michael Philpot Agency regularly conducts its business is to engage in the Illegal

1 Commission Scheme to obtain illegal upfront commissions and bonuses on policies  
2 that were applied for by Defendants and those complicit with them, without any good  
3 faith intention of actually maintaining these policies or paying the premiums for them  
4 as those policies were designed or as these policies require, as describe in more detail  
5 herein above and in the complaint filed concurrently herewith;

6  
7 **9. Describe what benefits, if any, the alleged enterprise receives from**  
8 **the alleged pattern of racketeering:** The agents who constitute the Michael Philpot  
9 Agency benefit from the Illegal Commission Scheme through the undeserved and ill-  
10 gotten commissions and bonus they obtain thereby. North American is unaware of  
11 what benefits the Michael Philpot Agency, in and of itself as a legal construct,  
12 receives due to the pattern of racketeering;

13  
14 **10. Describe the effect of the activities of the enterprise on interstate or**  
15 **foreign commerce:** The Michael Philpot Agency enterprise presently consists of  
16 approximately 155-190 sales agents in various states, including, but not limited to,  
17 California, Arizona, Florida, Georgia, Illinois, Indiana, Louisiana, Minnesota, North  
18 Carolina, Nevada, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah,  
19 and Wisconsin, who have sold North American UL policies, and, as North American  
20 is informed, believes and upon these bases alleges, is presently selling the life  
21 insurance products of other insurance companies from these states to consumers all  
22 over the United States. Approximately 54 of Philpot's sales agents are located in this  
23 judicial district, and North American is informed, believes, and upon these bases  
24 alleges, that these individuals sell insurance policies in interstate commerce.

25  
26 **11. If the complaint alleges a violation of 18 U.S.C. 1962(a), provide the**  
27 **following: (a) state who received the income derived from the pattern of**  
28

1 racketeering activity or through the collection of unlawful debt; and (b) describe  
2 the use or investment of such income: N/A

3  
4 12. If the complaint alleges a violation of 18 U.S.C. 1962(b), describe in  
5 detail the acquisition of maintenance of any interest in or control of the alleged  
6 enterprise: N/A

7  
8 13. If the complaint alleges a violation of 18 U.S.C. 1962(c), provide the  
9 following: (a) state who is employed by or associated with the alleged enterprise,  
10 and (b) state whether the same entity is both the liable "person" and the  
11 "enterprise" under 18 U.S.C. 1962(c): Defendants Philpot, Hirsh, Kuykendall,  
12 Lacape, McNamee, and Valdez are employed and/or associated with the Michael  
13 Philpot Agency; the Michael Philpot Agency, the "enterprise", is not a defendant and  
14 Philpot, Hirsh, Kuykendall, Lacape, McNamee, and Valdez, agents working under the  
15 rubric of this "enterprise", are liable "persons";

16  
17 14. If the complaint alleges a violation of 18 U.S.C. 1962(d), describe in  
18 detail the facts showing the existence of the alleged conspiracy: N/A

19  
20 15. Describe the alleged injury to business or property: North American  
21 has been significantly damaged financially in the tens of millions of dollars due to the  
22 payments it made to Defendants because of the Illegal Commission Scheme, in  
23 addition to various internal costs related to the Sham Policies;

24  
25 16. Describe the direct causal relationship between the alleged injury  
26 and the violation of the RICO statute: Defendants perpetrated the Illegal  
27 Commission Scheme, North American unwittingly paid them tens of millions of  
28

1 dollars in undeserved, ill-gotten commissions and bonuses, to its detriment and  
2 significant damage;

3  
4 **17. List the damages sustained by reason of the violation of 18 U.S.C.**  
5 **1962, indicating the amount for which each defendant is allegedly liable:** North  
6 American has suffered damages in amount no less than \$19 million from its payment  
7 of undeserved and ill-gotten commissions to Defendants due to the Sham Policies.  
8 There are further damages, subject to proof, related to presently in-force policies that  
9 have been issued, but have not yet lapsed, but that North American is informed,  
10 believes, and upon these bases alleges, are also a part of the Illegal Commission  
11 Scheme, and that will ultimately lapse. North American also seeks to recover the  
12 millions of dollars in unearned bonuses that were paid to Defendants, subject to proof.

13  
14 **18. List all other federal causes of action, if any, and provide the relevant**  
15 **statute numbers:** N/A

16  
17 **19. List all pendent state claims, if any:** N/A

18  
19 **20. Provide any additional information that you feel would be helpful to**  
20 **the court in processing your RICO claims:** The Illegal Commission Scheme is  
21 harmful, not only to North American, but to the life insurance industry as a whole, and  
22 to life insurance consumers across the country. The Illegal Commission Scheme  
23 violates that legitimate purpose of providing insurance, which is to provide benefits to  
24 individuals or entities with an insurable interest in the insured, by instead providing  
25 immediate and significant monetary benefits to a group of complicit individuals and  
26 sales agents through fraudulent and ill-gotten commissions, bonuses, rebates and free  
27 short-term insurance. The cost of insurance for those products utilized by the Illegal  
28 Commission Scheme is shifted to those honest policyholders who pay sufficient

1 premiums to maintain their policies in force and who intend to keep their policies in  
2 force as those products have been designed by insurance companies, such as North  
3 American. In addition, the Illegal Commission Scheme deprives honest consumers of  
4 fairly priced life insurance products by transferring the expenses associated with  
5 underwriting and issuing such products thereby causing honest consumers to pay a  
6 higher price for the product than they would have if the Illegal Commission Scheme  
7 had not occurred.

8  
9 DATED: February 3, 2008

10 REED SMITH LLP

11 By 

12 Robert D. Phillips, Jr. (SBN 82639)

13 Miles M. Cooley (SBN 206783)

14 Attorneys for Plaintiff

15 North American Company For Life and  
16 Health Insurance  
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